

**Loble, Bruce**

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**From:** Loble, Bruce  
**Sent:** Tuesday, March 27, 2007 9:07 AM  
**To:** Morris, Brian  
**Cc:** West, Candace; Hall, Tim; Lane, Bob; Connor, John; 'stevebrown1313@aol.com'; Chris Manos  
**Subject:** Water Adjudication - Practice of Law Proposed Rules  
**Attachments:** UPL Rules 3-26-07 .doc

Justice Morris:

In accordance with my understanding of the somewhat Delphic discussion at the Supreme Court's March 20 public meeting, there was some interest in reviewing proposed rule language which would allow water users to engage in settlement efforts (without a requirement to employ attorneys) during a pre-discovery phase of the Water Court adjudication process. Attached are some proposed rules which would accomplish this task. These proposed rules modify and expand on existing Rule 16, W.R.Adj.R. and reflect a revision of the earlier proposed Rule 47, W.R.C.E.R. and Rule 33, W.R.Adj.R.

Based on my almost 17 years of experience in the Water Court, I believe the Water Court's problem solving, user friendly process will more quickly accomplish the legislative goal of completing the adjudication than will a process that relies on heavy lawyer participation. However, you are the supervisory court. I am willing to help you draft a rule that will draw the line where the Court thinks best. So, if the attached proposal is not satisfactory and you would like me to try again, just let me know where you want the line drawn and I will draft another proposal for review.

Bruce Loble  
Montana Water Court

5/23/2007

## **ADD TO WATER RIGHT CLAIM EXAMINATION RULES**

**Rule 47. Unauthorized Practice of Law.** It is not the unauthorized practice of law for water users (with or without the assistance of attorneys) and department claims examination personnel to confer, to exchange information, or to prepare, tender, and accept amendments to statements of claim when they do so in accordance with the Water Right Claim Examination Rules or § 85-2-243, MCA.

## **ADD TO WATER RIGHT ADJUDICATION RULES**

~~**RULE 16. SETTLEMENT CONFERENCES AND MEDIATION.** The water court may require parties to participate in settlement conferences or may assign the matter to a mediator. In the event the water court assigns an outside mediator, the parties shall share and pay the expense of hiring the mediator as directed by the water court.~~

### **RULE 16. SETTLEMENT AND MEDIATION.**

**Rule 16(a). Settlement Proceedings.** Initial proceedings in the water court will emphasize and facilitate the resolution of objections and issue remarks through settlement or mediation. During the initial settlement proceedings, parties (with or without the assistance of attorneys) or department claim examination personnel may confer and exchange information; prepare and tender documents; and file settlement or issue remark resolution documents with the water court. Prior to issuance of an order under Rule 16(c) W.R.Adj.R., parties will not engage in formal discovery or file dispositive motions regarding any or all of the claims involved in the initial settlement proceedings without leave of court.

**Rule 16(b). Mediation.** The water court may appoint a mediator to facilitate settlement. The parties shall share and pay the expense of hiring a mediator as directed by the water court.

**Rule 16(c). Hearing Track.** If, after a reasonable amount of time, the parties have not filed settlement or issue remark resolution documents, the water court will issue an order commencing hearing proceedings. This order

will provide notice that all parties, other than natural persons representing themselves, must be represented by an attorney in all subsequent water court proceedings. The order will specify a date by which attorney notices of appearance must be filed.

## **RULE 33. ATTORNEY REPRESENTATION**

**Rule 33(a). Attorney Representation.** After the water court issues its order under Rule 16(c), W.R.Adj.R., only an attorney licensed to practice law in Montana (or an attorney who is admitted *pro hac vice*) may represent a party in water court proceedings except when natural persons appear *pro se*.

**Rule 33 (b). Unauthorized Practice of Law.** Actions taken under Rule 16(a) or 16(b), W.R.Adj.R. do not constitute the unauthorized practice of law.

**Rule 33(c). Rules of Professional Conduct.** It is not a violation of Rule 5.5 of the Montana Rules of Professional Conduct for an attorney to confer, negotiate or resolve issues with an unrepresented party under Rule 16(a) or 16(b), W.R.Adj.R., or for water court personnel to accept and rely upon documents filed by or on behalf of an unrepresented party under Rule 16(a) or 16(b), W.R.Adj.R.